

STATE OF MICHIGAN
COURT OF APPEALS

TELEGRAPH MOBILE HOME PARK, L.L.C.,

Plaintiff-Appellant,

v

SAM N. CURCURU and CURCURU
CORPORATION,

Defendants-Appellees.

UNPUBLISHED

March 16, 2006

No. 257811

Oakland Circuit Court

LC No. 2003-051605-CK

Before: Davis, P.J., and Cavanagh and Zahra, JJ.

PER CURIAM.

Plaintiff, Telegraph Mobile Home Park, L.L.C., appeals as of right a judgment of no cause of action in favor of defendant Curcuru Corporation, following a jury trial.¹ This action arose when plaintiff purchased a mobile home park from defendant Curcuru Corporation. Plaintiff claimed that defendants breached the purchase agreement by failing to disclose material information concerning the property, including a state enforcement action against the property that resulted in a consent agreement shortly before the closing. Plaintiff argues that the jury's verdict of no cause of action is against the great weight of the evidence, entitling it to a new trial or judgment notwithstanding the verdict. We affirm.

To preserve a claim that a jury verdict is against the great weight of the evidence, a party must raise the issue in a motion for a new trial before the trial court. *Hyde v U of M Bd of Regents*, 226 Mich App 511, 525; 575 NW2d 36 (1997). Here, plaintiff's great weight of the evidence issue is waived because plaintiff did not raise this issue below in a motion for a new trial. *Rickwalt v Richfield Lakes Corp*, 246 Mich 450, 464; 633 NW2d 418 (2001). Additionally, plaintiff never preserved its sufficiency of the evidence issue by raising the issue below in a motion for a directed verdict, judgment notwithstanding the verdict, or a new trial.

¹ The trial court granted defendant Sam N. Curcuru's motion for directed verdict at the conclusion of the trial. Although plaintiff refers to defendants in the plural in its brief on appeal, plaintiff has not raised any argument suggesting a challenge to the directed verdict. Therefore, the jury's verdict of no cause of action in favor of Curcuru Corporation is the only issue on appeal.

Napier v Jacobs, 429 Mich 222, 224, 414 NW2d 862 (1987). Therefore, this issue is also waived absent extraordinary circumstances creating a miscarriage of justice. *Id.*

Plaintiff argues on appeal that defendants breached the purchase agreement by violating paragraphs 3(d), 8(a)(5), and 10. The record shows that only an alleged breach of paragraph (3)(d) was presented to the jury. Plaintiff did not argue below that the latter two paragraphs were breached. Plaintiff did submit to the jury their allegation that defendants breached paragraph 3(d) of the purchase agreement by failing to disclose that there was a pending governmental investigation, and they alleged that the investigation ultimately had a material adverse effect on the use or operation of the property. However, there was evidence that plaintiff's employees, including plaintiff's legal counsel, were aware of a state enforcement action before the closing, and that plaintiff was given a copy of a consent agreement between Curcuru Corporation and the state at the time of closing. According to a state employee, defendants addressed the alleged violations and the trailer park was safe, adequate, and licensed before the closing. Evidence was also presented that the problems that arose after the closing were the result of plaintiff's management. Plaintiff has not made any showing of compelling or extraordinary circumstances amounting to a fundamental miscarriage of justice to warrant appellate relief. *Napier, supra.*

Affirmed.

/s/ Alton T. Davis
/s/ Mark J. Cavanagh
/s/ Brian K. Zahra